

REMOVAL OF NAME OF MEMBER
AS COSPONSOR OF H.R. 4200

Mr. LEWIS of California. Madam Speaker, I ask unanimous consent to have my name removed as a cosponsor of H.R. 4200.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

APPOINTMENT OF CONFEREES ON
H.R. 3199, USA PATRIOT AND
TERRORISM PREVENTION REAUTHORIZATION ACT OF 2005

Mr. SENSENBRENNER. Madam Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3199) to extend and modify authorities needed to combat terrorism, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The Clerk read the title of the bill.

□ 1515

The SPEAKER pro tempore (Mrs. CAPITO). Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

MOTION TO INSTRUCT OFFERED BY MR. BOUCHER

Mr. BOUCHER. Madam Speaker, I have a motion to instruct at the desk which I offer on behalf of myself, the gentleman from California (Mr. ROHRABACHER), and the gentleman from Florida (Mr. MACK).

The Clerk read as follows:

Mr. Boucher moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill H.R. 3199 be instructed to recede from disagreement with the provisions contained in subsections (a) and (b) of section 9 of the Senate amendment (relating to the modification of the PATRIOT Act sunset provision and the extension of the sunset of the "Lone Wolf" provision).

The SPEAKER pro tempore. Pursuant to clause 7 of rule XXII, the gentleman from Virginia (Mr. BOUCHER) and the gentleman from Wisconsin (Mr. SENSENBRENNER) each will control 30 minutes.

The Chair recognizes the gentleman from Virginia (Mr. BOUCHER).

Mr. BOUCHER. Madam Speaker, I yield 10 minutes to the gentleman from California (Mr. ROHRABACHER), and I ask unanimous consent that he be allowed to control that time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. BOUCHER. Madam Speaker, I yield for the purpose of making a unanimous consent request to the gentleman from Virginia (Mr. SCOTT).

(Mr. SCOTT of Virginia asked and was given permission to revise and extend his remarks.)

Mr. SCOTT of Virginia. Madam Speaker, I rise in support of the motion to instruct.

The current House bill provisions for 10 year sunsets on the 215 and 206 roving wiretap powers is not much better than no sunset at all. What we are talking about under the 215 provision is power to get access to your personal records from a business, including a public library, without you ever knowing about it, or what is done with the information. And the librarian or other business operator cannot tell you or anyone else other than the business's attorney or appropriate superiors, about the FBI's taking your records.

Under the roving wiretaps provision, after obtaining a roving wiretap from the secret FISA court, the FBI can follow the target around and tap any phone the target has access to, including yours if he or she happens to be a neighbor and comes to your house, without having to first determine that the phone is actually being used by the target before they start listening in.

The 4-year sunsets worked to make the Justice Department responsive to Congress in providing the information needed to properly perform its oversight responsibility for the extraordinary powers extended under the PATRIOT Act, but only in the last year of the sunset. For most of the 4-year period leading up to the sunsets, the Justice Department refused any meaningful oversight of their PATRIOT Act powers and other war on terror authorities. Even with Chairman SENSENBRENNER threatening a subpoena because he was not getting answers to his PATRIOT Act questions, it wasn't until the powers were set to expire that we got real answers—hard numbers and at least anecdotal evidence of their use.

Take, for example, the effort to try to get information about library record requests under the secretive Section 215 powers where the recipient of the order is gagged from disclosing any information about it: first we were told that information about even the number of these orders was secret, so it couldn't be disclosed. It was only in the last year of the sunset that we were finally told that there had been no 215 orders issued to libraries, then we learned that this was misleading because most libraries cooperated with FBI requests for information without requiring a 215 order, and with all the secrecy and gag orders in effect, we still don't know what the full story is. Perhaps some of the pending lawsuits will finally reveal what has been going on in this area.

The problem with a 10-year sunset is that it will have no impact on the current Administration, or the next one and only have an impact in the last year of the 3rd Administration from now. Moreover, with a 20-year retirement period for most career officials, in 10 years most of today's officials will have retired. So, that's really of little oversight value if we have to wait that long to get the kind of responsive information for oversight we were finally able to get in the last year of the current sunsets.

Accordingly, we should accede to the Senate sunset provisions which call for 4-year sunsets on the three most controversial and worrisome PATRIOT powers—secret acquisition of library and other business records, roving wiretaps, and the "lone wolf" provision for terrorism investigations, which allows a single individual to fall under the extraordinary, secretly administered foreign surveillance powers otherwise reserved for use against agents of foreign governments or organizations.

Mr. SENSENBRENNER. Madam Speaker, I do not intend to oppose the

motion to instruct, and I ask unanimous consent that I may control the 30 minutes that I have been allotted.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. BOUCHER. Madam Speaker, I yield myself 4 minutes.

Madam Speaker, I rise today in support of the Boucher-Rohrabacher-Mack motion to instruct the conferees to recede to the Senate with respect to sunset in 4 years the libraries and book stores, roving wire taps and loan wolf provisions of the USA PATRIOT Act.

The most effective way for Congress to maintain oversight of the most controversial powers that the PATRIOT Act conveys is to sunset those provisions within a reasonable period of time. In past years, well before the December 2005 sunsets contained in the original PATRIOT Act, we asked the Department of Justice how it was using the authorities that had been granted to the Department by the original act. Some questions simply went unanswered. Other questions were rebuffed, and we were told that the information was classified. And still others were avoided by telling us that the information simply was not available.

All of that changed in April of this year when the Department of Justice realized that straight reauthorization of the PATRIOT Act would not happen without serious answers to our reasonable questions. Suddenly, numbers and examples were no longer unavailable. Suddenly, the information we had long been seeking was provided. I have no doubt that if 16 provisions of the original act were not scheduled to sunset at the end of this year, we would still have little information on how these new authorities were being used.

If we have learned one thing over the last 4 years, it is that we will not get answers to our questions unless the Justice Department is compelled to come before us and justify its use of the more dangerous and intrusive powers that the law confers. Remember, sunsets do not in any way hinder law enforcement's use of the powers the PATRIOT Act confers. They merely ensure accountability and oversight, which are particularly important with respect to the three controversial provisions that are at issue today.

Section 215 of the law puts personal records, including library, bookstore and medical records, up for grabs by law enforcement with no requirement that the person whose records are sought be suspected of involvement in a crime. All law enforcement has to say is that the information is relevant to an investigation. It could be an investigation of someone the person has never met and about whom the person has no knowledge.

Moreover, an organization may not tell someone they have turned over his private information. So people have no way of knowing when their privacy has

been intruded upon. Earlier this year, the House, by a wide margin, voted to bar enforcement of this overly broad provision. But the House bill reauthorizing the act with some changes perpetuates it for 10 years, and I think that that is inappropriate. The Senate bill sunsets this provision in 4 years. Our motion to instruct directs conferees to adopt the 4-year sunset provision.

Section 206, John Doe roving wiretaps, allows law enforcement to obtain a single court order to tap any phone it believes a foreign agent would use, instead of getting separate orders for each phone. Moreover, the government is not required to name the target which allows wiretaps on phones of virtually anyone meeting the description of a John Doe. The combination of allowing blanket tapping of, for example, all of the pay phones in a target's neighborhood or the phones of all of his friends and relatives, combined with the ability to wiretap a vaguely described John Doe, means that roving John Doe wiretaps require so little specificity that they can easily be abused.

Sunsetting this provision in 4 years will allow Congress to revisit how this authority is being used and whether it continues to be necessary.

Reinstating is about accountability. This motion to instruct would simply assure that we have the authority to carry it out.

Madam Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I think it is important for the Members to note that the motion to instruct deals specifically with the "lone wolf" provision and sunsets that. The lone wolf provision was not passed as a part of the PATRIOT Act in October 2001, but was included as a part of the intelligence bill which was enacted into law a little bit less than a year ago. So as a result, the committees and the public have not been able to have as extensive oversight and for as long a period of time as the other 16 provisions that were sunsetted in the act which the President signed in October 2001.

So I think it is appropriate to have a sunset on the lone wolf provision simply because we do not have the experience of being able to examine what the Justice Department has done with this new and expanded authority.

On the other hand, let me say that we are negotiating with the Senate at the present time on what the length of the sunset is, and I think that the sunset on this provision will be longer than 4 years, and the sunset on the other two provisions that were contained in the House-passed bill will be shorter than the 10 years that the House of Representatives placed in the bill, which was passed and sent over to the other body.

Having said all of this, I would like to make a couple of points. First of all,

finding out what a Department or an agency of the executive branch is doing is entirely the prerogative of the committee that has the responsibility for the oversight and of its Chair. I have been extremely vigorous, since the enactment of the PATRIOT Act, in doing oversight over what the Department of Justice has done relative to that law, and I am happy to say that most of the oversight letters that have been sent to the Attorney General have been co-signed by the gentleman from Michigan (Mr. CONYERS), ranking member of the Judiciary Committee.

We have been kind of like tough school marm with the Department of Justice because when they were late and when they were nonresponsive to the questions, we required the Department of Justice to come up with responsive answers, and those responsive answers we placed on the committee's Web site so that anybody with Internet access could be able to find out what the questions were and what the answers were, with the exception of responses that were classified and which were sent to the Intelligence Committee rather than to the Judiciary Committee.

In addition to the oversight which was done, the original PATRIOT Act requires the Inspector General of the Department of Justice to report twice a year to the relevant committees of Congress the number of civil liberties violations that have been found against the Department of Justice as a result of its exercising the increased and new requirements and powers in the PATRIOT Act. We have received those reports by the Inspector General of the Department of Justice on a regular and on a timely basis, and the answer to how many civil liberties violations have been proven is none. Repeatedly they have said there are no civil liberties violations that the Inspector General has been able to uncover.

Further, I resisted a premature repeal or extension of the sunset prior to this Congress because I felt it was important that the oversight be done for as long a time as possible so that the Congress will be able to look over the shoulder of the Department of Justice and find out whether or not they were doing it the right way or whether or not they needed a tap on the shoulder from Capitol Hill for improvements in their methods of operation.

When we did get to this Congress with the oversight being completed and the sunset approaching, I fulfilled the promise that I made to the public and anybody who asked that we would be doing a section-by-section review of the expiring sections of the PATRIOT Act. The House Committee on the Judiciary had 12 separate hearings on the PATRIOT Act's sunset provisions. There were minority witnesses at all of the hearings except the one where the Attorney General and the one where the Deputy Attorney General appeared to testify. There was plenty of time for questions by every member of the committee.

As a result of all of those hearings, we found that all but two or three sections of the PATRIOT Act were essentially noncontroversial. Nobody was complaining about an abuse of power. Nobody had proved abuse of power. Nobody had alleged an abuse of power. And as a result, the House-passed bill eliminated the sunsets for those sections of the PATRIOT Act for which there was no complaint at these extensive series of hearings, and that is good policy. And if it is not good policy, then the message that is given downtown as well as to the public is that our oversight really does not make any difference. If the oversight shows they have been doing a good job, they ought to be rewarded.

Getting rid of the 14 of the 16 sunset provisions that were contained in the original PATRIOT Act does not mean that the Justice Department is not going to have the committee looking over its shoulder. We will do that; but, again, that depends upon the priorities of the committee and the priorities of its Chair. And as long as I am the chairman of the committee, there will be vigorous oversight of the Department of Justice, not only on how they are handling the PATRIOT Act but how they are handling all of the other laws that the committee has oversight jurisdiction over.

Because the motion to instruct only relates to the lone wolf provision and I believe that because we have had a much shorter period of time in viewing how they have dealt with the lone wolf provision because it was passed 3 years after the original PATRIOT Act was enacted into law, I think this motion to instruct is a proper one, although I do think that the difference between 4 years and 7 years still should be negotiated with the Senate. But because the gentleman from Virginia is 95 percent to where we ought to be, I am going to vote for it, and maybe he will be a little bit more flexible with the other 5 percent.

Madam Speaker, I reserve the balance of my time.

Mr. BOUCHER. Madam Speaker, I yield myself 30 seconds.

For basis of clarification, the motion to instruct that we have put forward applies to lone wolf, as the gentleman from Wisconsin indicates.

□ 1530

But it also applies to sections 206 and 215. The House sunsets those in 10 years, and we would instruct conferees to adopt the Senate 4-year sunset. I wanted to be sure that was well understood.

Madam Speaker, I reserve the balance of my time.

Mr. ROHRBACHER. Madam Speaker, first and foremost, I yield myself a moment here to thank the gentleman from Virginia (Mr. BOUCHER) for the time that he has yielded us and shown good faith with us in having an honest discussion of this very significant issue.

Madam Speaker, I yield for the purpose of making a unanimous consent request to the gentleman from Idaho (Mr. OTTER).

(Mr. OTTER asked and was given permission to revise and extend his remarks.)

Mr. OTTER. Madam Speaker, I rise in support of the motion to instruct.

We have heard much from many sides about the USA PATRIOT Act—concerns about what the bill does, statements about what it does not do, and fears about what it could do in the future. We have shared these discussions with constituents, state and local officials, businesses, librarians, and other government agencies.

But earlier this year we had an important opportunity to move those conversations back to Congress to examine—in a light much more clear and objective than that in which we passed the original bill—how the PATRIOT Act has protected us from further terrorist attack, and also how balance between national security and personal security needs to be restored.

As a result of the opportunity to debate, deliberate, and discuss, we made important changes to the original USA PATRIOT Act in H.R. 3199, changes that enable law enforcement to continue to investigate and prosecute crime while protecting civil liberties. Congress was able to go back and make those changes because the original bill included a sunset and made many questionable provisions subject to it.

This sunset served us well, and so I am perplexed that in the same bill where we made vital revisions to the USA PATRIOT Act we also eliminated many of the sunsets and extended others for a decade or more. In doing so, H.R. 3199 takes away from Congress the opportunity to periodically review these provisions and ensure that the tools they provide law enforcement are necessary and that they are not being abused.

I am glad that, in respect to Sections 206 and 215 of the USA PATRIOT Act, the Senate did not act as rashly as we did. I strongly urge conferees to see the wisdom of four-year sunsets for these sections, as passed by the Senate, and I ask my colleagues to join me in supporting this motion to instruct.

Mr. ROHRBACHER. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise in strong support of this motion to instruct conferees on the PATRIOT Act. Let me note that I am one of several, if not many, Members of Congress who feel that it was an act of bad faith on the part of those in this body who turned the temporary sunsetted provisions of the PATRIOT Act into permanent law for the United States of America.

I supported the PATRIOT Act and would have again voted for the PATRIOT Act as it was when we first voted for it, except now we end up with a PATRIOT Act that permanently changes the balance of power in the United States between the police power and the limitations of power of the policing authorities of the Federal Government. That, I do not believe, should be tolerated by those of us who love liberty and justice and feel that lim-

ited government is vital to the protection of freedom.

Second of all, let me note that any, any investigation or hearings that we have had so far into the PATRIOT Act are irrelevant to the issue at hand, the issue at hand as to whether or not we have permanently changed this law and whether in the future there could be abuse. I would say, along with many others, that by permanently granting these excessive powers, or extended powers, to the Federal Government in a time of war and then permanently extending it so that now it is the norm for a time of peace is asking for abuse. So whatever hearings have been held so far in this conflict are irrelevant.

On September 11, our country was attacked and we saw 3,000 Americans slaughtered before our eyes, and it totally justified the major expansion of the police and investigative powers of our government. I voted for the PATRIOT Act, as I just said, and I continue to support its provisions as a necessary expansion of police powers in order to prosecute this war on Islamofacism. They declared war on us every bit as much as the Japanese declared war on us on December 7, 1941.

However, as I said in the original bill, sunset provisions were placed in all of these expanded police powers that were going to enable us to protect our people in this time of war. It was a consensus that when the war was won, it was a consensus when this war was won, those powers would be rescinded and their purposes would have then been served.

The expanded authority we are talking about in terms of eliminating these sunsets in the current bill, this has nothing to do with fighting the war or winning the War on Terror. It has everything to do with using that war as an excuse to permanently change the way we do business in the United States. The standard we set for a war when we are at war with radical Islam should not be the new standard set for America once that war is over. It is as simple as that.

I support the expansion of those powers until we win that war. But we cannot, and this is what we have been handed, a bill that permanently does it so our way of life is changed after the war is over.

The special grants of police power that we have approved we believe should only last for the duration of the war, and we must demand at least a forced reexamination of these provisions to ensure that winning the War on Terror does not result in a permanent change of our way of life.

Of course, we are not here to debate the PATRIOT Act again. Today, we are limited to instructing conferees to adopt the Senate's version of the bill, which would sunset in 4 years the same two provisions that the House bill would sunset in 10 years. The rest of the expansion of the police powers, such as the sneak-and-peak searches, Internet and credit card seizures, the

lowering of standards for logging all calls dialed from one particular phone, and the rules against discussing property seizure, all without the traditional warrants that would be required for those activities, have been made permanent in U.S. law. The two provisions being allowed to sunset, as one might expect, are the most questionable of the lot.

Specifically, section 206 of the House version of the PATRIOT Act extends to Federal authorities for 10 years until 2015 the right to employ roving wiretaps, whether they have the name of a specific suspect or location notwithstanding. This should be reexamined before 10 years has lapsed if for no other reason than to just understand whether or not this tool is working for us in the War on Terror. Is it achieving the goals that it set out to achieve in this war?

The Senate version sunsets the clause in 4 years; that is much more responsible. Let us come back and reassess it. That is reasonable.

Section 215 will also be sunsetted in 2015 in the House version rather than in the 5 years in the Senate bill. This section allows for law enforcement to examine library and financial records of any person in connection with a Federal investigation. This provision is possibly the most controversial in the entire bill. My colleagues on one side of the aisle say that this is an unconscionable invasion of privacy, never justified, even in wartime. Others, however, argue that this particular provision is rarely, if ever, used, so why worry about it?

Well, let us be frank and admit that searching library and financial records of our citizens is hugely intrusive, even if it is rarely used. Nonetheless, this section 215 may be needed in a time of war to secure our country and to make sure our people are safe.

While granting the expansion of this police power with a reasonable time limit, such as the expansion of a shorter term of years to ensure section 215 is not abused, that seems reasonable. But it may, again, 215 may be justified now. We may have a justification to find out if someone who checked out a book on radical Islam has also checked out books on how to make bombs. That is why sunsetting this provision 4 years from now, rather than 10 years, is the right thing to do. We do not want to have that kind of power in the hands of the Federal police authorities after this war is over.

Finally, we need to ask, why do the radical Islamists hate us? They hate the openness of our society. They hate our tolerances, our belief in the equality before the law, the right of those of other faiths to worship, and the right of us to express our beliefs. In short, radical Islam is the enemy of freedom; thus, they are our enemy.

If we permanently alter the traditional limitations of our government here in America, the terrorists have won. They have changed our way of

life. During no war in the past, whether World War II or the Cold War, were the police powers of the Federal Government permanently changed so that after the war a new standard of government would exist.

Well, Ronald Reagan would never have supported such an expansion of Federal power and neither should we.

I ask my colleagues to vote on this motion to instruct conferees, and I would ask them to search their consciences about voting for a new PATRIOT Act at all that threatens to permanently change the American way of life.

Madam Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Madam Speaker, I am really disappointed that the gentleman from California (Mr. ROHRBACHER), whom I consider to be my friend, has said that the extensive oversight and the 12 hearings that the Judiciary Committee has done on a bipartisan basis is irrelevant. Because what he is saying is that the results of that oversight and the results of those hearings really do not make any difference when we are dealing with the extension of the PATRIOT Act.

I think they do. Because if you accept the argument that he has made, then the Congress should never do oversight because the results of the oversight are not going to make any difference in the policy.

To repeat myself, first, the Inspector General has not found a civil liberties violation. Secondly, of the 16 provisions where law enforcement powers were expanded, there were no allegations of misuse by the Justice Department in 14 of those 16 provisions. And when we had the hearings before the Judiciary Committee Subcommittee on Crime, the minority had at least one and, in some cases, two witnesses that could come in and present any information that they wanted to present.

Now, the way we make sure that there is not government overreaching in our system of government is to give the courts the power to declare unconstitutional overreaching by government agencies. The fourth amendment is alive and well, and the Supreme Court of the United States will never allow the Congress or State legislatures to ignore the provisions of the fourth amendment.

There has been not one of the 16 expanded powers in the PATRIOT Act, signed by President Bush in October of 2001, that has been declared unconstitutional. There has been no declaration of unconstitutionality of any of those powers. But what has been declared unconstitutional was a provision on national security letters that was put in the PATRIOT Act as a renumbering, but which was enacted as a result of a bill that originated in the other body in 1986. That bill was signed by President Ronald Reagan.

To the gentleman from California, you are wrong.

Madam Speaker, I reserve the balance of my time.

Mr. BOUCHER. Madam Speaker, I am pleased to yield 4 minutes to the distinguished ranking member of the House Committee on Intelligence, the gentlewoman from California (Ms. HARMAN).

(Ms. HARMAN asked and was given permission to revise and extend her remarks.)

Ms. HARMAN. Madam Speaker, I thank the gentleman for yielding me this time and I commend him for his leadership. And I am pleased to see that, so far, this debate has all been in favor of support of this motion to instruct, which I think is a very important statement for this House to make.

Madam Speaker, I take my responsibilities as ranking member of the Intelligence Committee very seriously. I spend a lot of my day and a lot of my weekend, and most of my nights thinking and dreaming about how I can add value to protecting Americans and American interests.

Earlier today, hotels in Amman, Jordan, were bombed. Over 50 people are dead, scores are wounded. The terrorists are there, and let us not make any mistake about it, they are trying to be here again. So it is absolutely correct that we need modern and appropriate legal authorities to find them, and prevent and disrupt their plans before they are able to execute them. Prevention and disruption is much better than response, and I think everyone in this Chamber is dedicated to making sure we have the right tools. That is why the PATRIOT Act passed 45 days after 9/11, overwhelmingly, and that is why the House bill passed again recently by a large margin.

However, consistent with statements that Mr. ROHRBACHER has just made, as we give these expanded authorities, we also need to assure the law-abiding public of America that we will be vigilant in supervising these authorities. Not just today, not just in the oversight hearings we held during this last year and, yes, we held a lot of them, but tomorrow and next year and the year after.

Having sunsets for these controversial provisions matters. That is why in the Intelligence Committee Mr. RUPPERSBERGER and Mr. HASTINGS offered amendments to impose sunsets. Some amendments passed, but they did not survive in the final House bill.

Sunsets are a good idea, and I think with very strong bipartisan support in this Chamber, that these new authorities need to carry with them the promise that Congress will be vigilant and, that 4 years from now, we will reconsider whether they are necessary.

Let me also add a word about national security letters, which were a remedy designed in the 1970s.

I think national security letters, a tool not in the PATRIOT Act, need to be reviewed as well by this House, and I think we need to consider whether the authority is too broad or whether, using a magistrate system or some other system, they should be reviewed

before they are issued. They should not become the backdoor route to using PATRIOT Act authorities without going through this careful system we have set up.

So, in conclusion, Madam Speaker, it is a dangerous world. We need the tools necessary to find the so-called "bad guys" before they attack us, but we also need the tools necessary to assure law-abiding Americans that we are paying careful attention, and that the Congress, an independent branch, will not now, not ever, let down our responsibility to safeguard civil liberty for American citizens.

□ 1545

Mr. ROHRBACHER. Madam Speaker, I yield 1½ minutes to my colleague from Florida (Mr. MACK).

Mr. MACK. Madam Speaker, first of all I want to associate myself with the comments made by my colleague from California and also to state for the record that I support the motion to instruct. I also would like to thank the chairman for his comments today regarding the motion to instruct.

I ran on a platform of freedom like most people did in this Congress. And I believe it was Ronald Reagan, and I am paraphrasing, who said freedom is a fragile thing that must be defended by each generation. And that is what I am here to do. That is what I am here to do today. I believe that we ought to look for other or additional sections of this bill to sunset, but I am happy to see that this Congress is taking a hard look at the provisions and the sections that have already been mentioned to ensure that the freedoms that our families enjoy and the people in this country enjoy so much will be protected.

I also understand the arguments that have been made about the oversight of the committee; and, Mr. Chairman, I know that as the chair of that committee that will be done. My concern is for future generations and to make sure that none of the freedoms that Americans enjoy today will ever be taken away from them in the future.

Mr. BOUCHER. Madam Speaker, I yield 3 minutes to the gentleman from New York (Mr. NADLER), a distinguished member of the House Judiciary Committee.

Mr. NADLER. Madam Speaker, I rise in support of the motion to instruct. This bill makes permanent the most dangerous and intrusive provisions of the PATRIOT Act, 14 of the 16 previously sunsetted provisions. The remaining two sunsetting provisions are renewed for 10 years. Ten years is not a sunset. Ten years is quasi-permanent.

These provisions are particularly worrisome because they expand the powers of the police to pry into the privacy of ordinary Americans, to go into their homes, into their papers, into their Internet records, their telephone records, their medical records, their bank records.

Reinstating the sunset is about accountability. The breadth of these provisions providing for roving wiretaps,

for sneak-and-peek searches, for invading library privacy and section 505, expanding the use of national security letters invites abuse.

The administration assures us, the chairman assures us that these provisions have not been abused. But how do we know? It is all secret. We were told repeatedly that section 215 we should not worry about; it is rarely if ever used to demand library records. Now we know why.

The Washington Post revealed last Sunday that the FBI issues more than 30,000 section 505 national security letters a year, many to libraries for "preliminary investigations and threat assessments" before deciding whether or not to launch an investigation. These tens of thousands of invasive government demands for sensitive and private information which never even go before a judge have resulted in the collection of probably hundreds of millions of personal facts regarding innocent Americans, innocent American residents, citizens, and businesses. And the Bush administration has decided to file all this personal information in government databases even if no basis is found for a real investigation and they will not even rule out selling this information to private conditions.

Sunsets have been the major check, albeit probably inadequate checks, on abuse of the PATRIOT Act. They mean that at least every 4 years Congress is required to look at the law again, to revisit it, and has the opportunity to ask tough questions on the use or abuse of these powers, and most important, the administration cannot stone-wall these questions except for every 4 years.

We should have to look into these burdens on our civil liberties at least one in four years and ask are these powers being abused, should they be fine tuned? Should they be narrowed? Have we made the right balance between security and liberty? What can we do to ensure that our constitutional rights are not violated?

I wish, Madam Speaker, that this motion to instruct were broader than it is, that it kept all the sunset provisions from being made permanent. The FBI will still have all the powers it needs. It will simply have to hold itself accountable to Congress and the American people every 4 years about how these powers are used. Why is that so terrible?

I call on all my colleagues, Democrats and Republicans, liberals and conservatives, to begin to safeguard the national security, not adequately, but to begin to safeguard the civil liberties of all Americans by voting for this very, very skimpy motion to instruct.

Mr. ROHRABACHER. Madam Speaker, I yield myself the balance of my time.

The discussion today is not whether or not the Federal Government after 9/11 should have had expanded police powers and investigative authority.

That is not the issue. And I voted for that expansion of the police power, just as most of my colleagues on the other side of the aisle and all of my colleagues on this side of the aisle did, almost all of my colleagues on this side of the aisle voted. That is not the question, because when we voted for those expansions, we put in a sunset clause that after a certain number of years, 4 years, that the issues of those expanded authorities would be re-examined.

The only question at hand in the debate today is whether or not those expanded powers for wartime expansion in the war against radical Islam should be made permanent even now in this time of crisis. This is not a good strategy for free government to change permanently its law during a moment of crisis. I would vote for the PATRIOT Act again because I think that these powers that were just described are needed at this moment, even the ones that were just described by my friends on the other side of the aisle.

But that still does in no way justify permanently expanding those powers so that once the gentleman from Wisconsin is no longer here to conduct hearings that the Federal Government still has those powers perhaps for people who are less, let us say less responsible than Mr. SENSENBRENNER in overseeing those expanded powers. Our Founding Fathers understood limitations on government is a guarantee of freedom. Now is not the time for us to permanently change law and permanently put freedom at risk.

Mr. BOUCHER. Madam Speaker, I yield 3 minutes to the gentleman from Maryland (Mr. HOYER), the distinguished minority whip of the House.

Mr. HOYER. Madam Speaker, I thank my friend for yielding, and I urge my colleagues to vote for this important motion to instruct on the PATRIOT Act. Like so many, I voted for the PATRIOT Act the first time and the second time. But I agree with the gentleman from California and the gentleman from Virginia, and as I understand it, perhaps the chairman as well. I simply do not understand the reticence to include sunset provisions on a law that affects the civil liberties of every American citizen.

In fact, when we reauthorized the PATRIOT Act in July, the Republican bill permanently authorized 14 of the 16 provisions. The other two provisions, one for roving wiretaps and the other dealing with the FBI's power to demand business records, were extended for 10 years. Democrats fought to sunset these provisions last summer; and we do so again today, apparently successfully, because, I think, people have, upon reflection, thought that this is a better policy. Because when it comes to the government's power to intrude on the private lives of citizens, the United States Congress should not give the government unchecked power to do so.

Just last Sunday the Washington Post documented, and it has been ref-

erenced here, the hundredfold increase in the issuance of national security letters seeking information about U.S. citizens and visitors who are not even alleged to be terrorist or spies. There are terrorists. Terrorism is a serious threat, and we need to be serious in our response. But privacy concerns must not be casually dismissed. In fact, it was not until several sections of the PATRIOT Act were set to expire that the Justice Department began to respond to congressional inquiries and we had the opportunity to assess, examine, and recalibrate our policies.

I submit to my colleagues they have given the Justice Department carte blanche. No matter how good the leadership is in the Justice Department, it is not a policy that we ought to pursue and would be an abdication of our congressional oversight responsibility and contrary to the interests of the American people.

Madam Speaker, this motion would recede to the Senate and create a 4-year sunset on the most controversial provisions in the PATRIOT Act, orders by the secret Foreign Intelligence Court, blank wiretap orders and the surveillance of agents of a foreign power who act alone. This motion, in my opinion, is a step in the right direction, and I hope the Members support it.

As I said, and I will echo the comments of so many here, terrorism is an immediate and proximate threat, as we lawyers say; and we need to respond effectively to keep America safe. But in the process, we must also protect the basic rights that our Founding Fathers knew were the bedrock of the United States democracy.

Mr. SENSENBRENNER. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I am the author of the sunsets that were put in the PATRIOT Act that was signed by the President in October of 2001 because I agreed with what I heard from the gentleman from Maryland (Mr. HOYER), that we ought to look at what the Justice Department had done with these expanded powers. We have looked at those actions. We have looked at how those expanded powers have been utilized; and in 14 of the 16 cases, nobody had any complaint about how those expanded powers have been utilized.

Now, sunsets are very rare in congressional action. I am proud of the fact that I put the sunsets in almost 4 years ago. But what I will say is that we do not sunset a whole host of other programs. Social Security is not sunsetted, nor should it be. Amtrak is not sunsetted, maybe it should be, but it is not. And I have, I am looking at the Federal criminal code and the national security letters that have been complained of by people on the other side of the aisle; they are not sunsetted. The authority for the national security letters was passed in 1986 when, I recall, the current minority party had a significant majority in the House of Representatives.

Now, if sunsets were so important when we are dealing with the civil liberties of the people of the United States of America, why did you forget about them 19 years ago?

Madam Speaker, I reserve the balance of my time.

Mr. BOUCHER. Madam Speaker, I yield 2 minutes to the gentleman from Maryland (Mr. RUPPERSBERGER).

Mr. RUPPERSBERGER. Madam Speaker, I rise in support of the motion to instruct. Let me say up front that I think the PATRIOT Act provided essential tools that were not available before the 9/11 terrorist attacks. These tools are essential to identifying and tracking terrorists inside the United States, and that is the way it should be. It has to be national security first. But the PATRIOT Act was passed just 7 weeks after 9/11. When it was passed, there were concerns that some of the authorities were too broad or too susceptible to abuse. The proposal emerged to sunset 16 of the most controversial provisions. That was a sensible idea. The sunsets would allow the Justice Department and the public to evaluate the effectiveness of these provisions and decide whether there was a continuing need for them or a need to modify them.

The House bill includes important refinements to the PATRIOT Act passed 4 years ago. Honest people can disagree about whether these provisions were too broad or just right; but the point is, the sunset provisions worked. They compelled Congress to take a second look at key provisions in the PATRIOT Act and improve them. The sunsets forced us to have accountability as we expanded law enforcement authorities. That is a game plan that we should stick with. We should continue to scrutinize these authorities from time to time. That is why I offered an amendment to extend the PATRIOT Act sunsets during the Intelligence Committee markup of H.R. 3199.

□ 1600

Like my amendment, this instruction to conferees to accept the Senate sunsets would not alter the original PATRIOT Act authorities. After all, national security has to be our number one priority, but accepting the Senate sunsets would also force us to reevaluate again 4 years from now whether they are truly effective in fighting terrorism. Oversight and accountability is an essential element of the PATRIOT Act.

I would also like to respond to the chairman's point that there were not any abuses. The issue is not whether there were abuses. The issue is setting a system that we need to have in effect.

Mr. BOUCHER. Mr. Speaker, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE), another distinguished member of the House Judiciary Committee.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the gentleman from the Judiciary Committee for the wisdom of this motion, and I applaud the joining by the chairman of the full committee and offer an explanation for the reason our colleagues should join us in supporting this motion to instruct, and frame it in the context of the crisis of the recent weeks, asking Congress to accept its responsibility to investigate the CIA leaks and now to investigate further the leaking of the CIA sites, some call it sites of torture, incarceration, of individuals around the world who have been charged or are alleged to have committed acts of terrorism.

It is important now to speak to the American people and argue that this motion to instruct does simply one thing. It now brings the American people into the focus of being the priority of the actions of this Congress.

Yes, the PATRIOT Act in some minds has offered to provide us more protection. There were aspects of the PATRIOT Act that I did support. The original writing was a bipartisan product. Unfortunately, the ultimate product was not as bipartisan.

But what is bipartisan is our responsibility to protect the American people. The 4-year sunset gives us that opportunity so that we can begin in 4 years to assess whether authorizing secret intelligence, going into libraries and getting a list of your library books helps or hurts the American people; whether the authorizing of a blank wiretap helps or hurts the American people; whether or not the lone wolf, where you can be one individual, not part of a terrorist organization or an association or to be part of a large massive group, but one individual who may be part of, words may have suggested that they are giving some comfort to those whose views we disagree with can be hauled in as a terrorist. This sunset allows us to protect the American people.

Many of us are familiar with the recent film that said "Good Night and Good Luck." It reminded us of the days of the McCarthy era when no one seemed to want to rise to support the rights of the American people. I ask my colleagues to support this motion to instruct and sunset in 4 years so Congress can have the ability to protect the rights of the American people.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the motion to instruct currently pending.

The SPEAKER pro tempore (Mr. SIMPSON). Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, we have had a pretty extensive debate on this motion to instruct. I think the motion to instruct is constructive and would urge the Members to support it.

On the other hand, after listening to the debate that has been going on here for the last 40 or 45 minutes or so, what we have heard from the people who have complained about the PATRIOT Act is the potential for abuse rather than abuse itself. I would point out that there is a potential for abuse of practically everything law enforcement does.

There is a tremendous amount of discretion that the law and the Constitution have given to our law enforcement personnel, to our prosecutors, to those who apply for search warrants as well as other tools that law enforcement utilizes to keep us safe and to try to track down those who commit crimes or who conspire to commit crimes or acts of terrorism.

I do not know why there seems to be a greater suspicion that law enforcement already abuses provisions under the PATRIOT Act rather than other provisions of law which are not sunset, including the national security letters, because the facts simply are not there that there has been abuse.

What I would like to ask the Members as we are debating the PATRIOT Act as it goes forward through conference and to the floor is to look at what the Justice Department has done; and where the Justice Department has done it right, the Justice Department should be told they have done it right. And that means eliminating the sunsets from those areas where it has done it right.

And where there has to be a greater scrutiny on it, such as the two provisions in the House-passed bill and the lone wolf provision that are being talked about, we can talk about future sunsets; and I support the concept of doing that.

But simply going around and painting with a broad brush the Justice Department for the potential of abuse which has not happened, I think, is unfair and does not go to the debate of whether the PATRIOT Act has actually served to protect the people of the United States without trampling on their civil liberties. It has done that.

That is why it is a good law and that is why some provisions should be made permanent and some provisions should be sunsetted to be looked at in the future.

Mr. Speaker, again I urge the Members to support the motion to instruct. When we come back with a conference report, I will urge the Members to support that as well.

Mr. Speaker, I yield back the balance of my time.

Mr. BOUCHER. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, first of all, I want to commend the gentleman from California (Mr. ROHRBACHER) and the gentleman from Florida (Mr. MACK) for

partnering with us and structuring this motion to instruct conferees. I want to express appreciation to the gentleman from Wisconsin (Mr. SENSENBRENNER) for his constructive comments and for his support of the motion to instruct.

The motion to instruct promotes accountability. It assures that we remain in a strong position in our oversight function. Recent history clearly shows that in the absence of a near-term sunset we will not get answers to our questions about how controversial law enforcement powers are being used. In the absence of a near-term sunset, we cannot ensure that civil liberties are being protected.

This is not a matter about what the Department of Justice has done in the past, and I differ with the gentleman from Wisconsin on this matter. This is all about what the Department of Justice may do in the future. And having near-term sunsets will ensure that we can perform oversight over that performance.

Sunsets do not prevent law enforcement from using the broad powers the PATRIOT Act confers, but sunsets promote accountability. They ensure we get the information necessary to conduct oversight and to make decisions about whether powers that are subject to abuse should be contended.

Adopt this motion, let us adopt the Senate's 4-year sunsets and, in doing so, further the cause of protecting Americans' civil liberties. Mr. Speaker, I urge approval of the motion to instruct.

Mr. JONES of North Carolina. Mr. Speaker, I rise in support of this motion to instruct.

The American people want us to protect them from the terrorists—but the American people also want us to protect their liberties and constitutional rights from an overreaching government.

Our system of government is made up of checks and balances and this motion to instruct only expands these checks and balances.

A review every 4 years is the right action to assure American citizens that their civil liberties are protected.

Let me close with a quote attributed to Patrick Henry:

The Constitution is not an instrument for the government to restrain the people, it is an instrument for the people to restrain the government—lest it come to dominate our lives and interests.

I ask that we restore the Senate's Sunsets in the Conference Report.

Mr. BOUCHER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentleman from Virginia (Mr. BOUCHER).

The motion was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. Without objection, the Chair appoints the following conferees:

From the Committee on the Judiciary, for consideration of the House bill (except section 132) and the Senate amendment, and modifications committed to conference: Messrs. SENSENBRENNER, COBLE, SMITH of Texas, GALLEGLY, CHABOT, JENKINS, CONYERS, BERMAN, BOUCHER, and NADLER.

Provided that Mr. SCOTT of Virginia is appointed in lieu of Mr. NADLER for consideration of sections 105, 109, 111–114, 120, 121, 124, 131, and title II of the House bill, and modifications committed to conference.

From the Permanent Select Committee on Intelligence, for consideration of sections 102, 103, 106, 107, 109, and 132 of the House bill, and sections 2, 3, 6, 7, 9, and 10 of the Senate amendment, and modifications committed to conference: Mr. HOEKSTRA, Mrs. WILSON of New Mexico, and Ms. HARMAN.

From the Committee on Energy and Commerce, for consideration of sections 124 and 231 of the House bill, and modifications committed to conference: Messrs. NORWOOD, SHADEGG, and DINGELL.

From the Committee on Financial Services, for consideration of section 117 of the House bill, and modifications committed to conference: Messrs. OXLEY, BACHUS, and FRANK of Massachusetts.

From the Committee on Homeland Security, for consideration of sections 127–129 of the House bill, and modifications committed to conference: Messrs. KING of New York, WELDON of Pennsylvania, and Ms. ZOE LOFGREN of California.

There was no objection.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 1751.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

SECURE ACCESS TO JUSTICE AND COURT PROTECTION ACT OF 2005

The SPEAKER pro tempore (Mrs. CAPITO). Pursuant to House Resolution 540 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 1751.

□ 1610

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1751) to amend title 18, United States Code, to protect judges, prosecutors, witnesses, victims, and their family members, and for other purposes, with Mr. SIMPSON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered read the first time.

The gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentlewoman from Texas (Ms. JACKSON-LEE) each will control 30 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of H.R. 1751, the Secure Access to Justice and Court Protection Act of 2005.

Violent attacks and intimidation against courthouse personnel and law enforcement officers present a threat to the integrity of the justice system that Congress has a duty to confront. The murder of family members of United States District Judge Joan Lefkow, the brutal slayings of Judge Rowland Barnes, his court reporter, his deputy sheriff, and a Federal officer in Atlanta, and the cold-blooded shootings outside the Tyler, Texas, courthouse all underscore the need to provide better protection for judges, courthouse personnel, witnesses, law enforcement and their family members.

This bill is an important bipartisan measure introduced by the gentleman from Texas (Mr. GOHMERT) and the gentleman from New York (Mr. WEINER). It will help address the problem of violence in and around our Nation's courthouses.

Statistics show that aggravated assaults against police officers are a serious national problem. According to the Bureau of Justice Statistics, 52 law enforcement officers were killed in the United States in 2002 and 56 were killed in 2001. From 1994 through 2003 a total of 616 law enforcement officers were feloniously killed in the line of duty. Approximately 100 of these officers were murdered after being entrapped or ambushed by their killers. These attacks are simply unacceptable.

The lives of judicial personnel are also at great risk. According to the Administrative Office of the United States Courts, Federal judges receive nearly 700 threats a year and several Federal judges require security personnel to protect them and their families from terrorist associates, violent gangs, drug organizations and disgruntled litigants. The intimidation of judges directly assaults the impartial administration of justice our Constitution demands.

Court witnesses are also at risk. Threats and intimidation toward witnesses continue to grow, particularly at the State and local level. In 1996, a witness intimidation study by the Justice Department included that witness intimidation is a pervasive and insidious problem. No part of the country is spared and no witness can feel entirely free or safe.

Prosecutors interviewed in this study estimated that witness intimidation